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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,134	09/11/2000	Gerard Lang	05725.0654	8900

7590

10/08/2002

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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

26

DATE MAILED: 10/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/600,134

Applicant(s)

LANG ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

- 1 This action is responsive to the remarks filed on July 23, 2002.
- 2 The provisionally rejection of claims 22-45 and 48-58 under the judicially created doctrine of double patenting over claims 29-61 of the co-pending Application No. 09/600136, is withdrawn because the applicant provided a proper terminal disclaimer.
- 3 Claims 22-58 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Aaslyng et al. (WO 97/19999) in view of Audousset et al. (US 5,769,903), for the reasons set forth in the previous office action in paper No. 16, dated 3/26/2002.

Response to Applicant's Arguments

- 4 Applicant's arguments filed 7/23/2002 have been fully considered but they are not persuasive.

With respect to the rejection based upon Aaslyng (WO' 999) in view of Audousset (US' 903), Applicant argues that Aaslyng fails to disclose the 3-methyl-4-aminophenol oxidation base, or addition salts thereof and Audousset also fails to disclose the 3-methyl-4-aminophenol oxidation base, or addition salts thereof and accordingly, the Office has failed to make a prima facie case of obviousness because the cited reference do not teach or suggest all the claim limitations.

The Examiner respectfully, disagrees with the above arguments because Aaslyng (WO' 999) as a primary reference teaches and discloses a hair dyeing composition comprising oxidation bases (dye precursors) of amino-phenol compounds such as para-aminophenol (see page 9, lines 15-25) and Audousset (US' 903) in analogous art and as a secondary reference teaches a hair dyeing composition comprising oxidation bases of amino-phenol compounds such

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as 4-amino-3-methylphenol (see col. 6, lines 25-27). Therefore, the primary reference suggests the genus of the para-aminophenol as an oxidation base in the dyeing composition while the secondary reference teaches the species of 4-amino-3-methylphenol as claimed in claims 50 and 57, as an oxidation base in the dyeing composition. Therefore, the combination is proper and the prima facie case of obviousness has been established.

5 THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

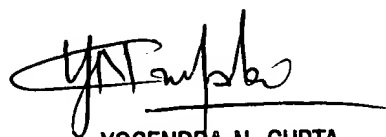
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Elhilo

October 2, 2002



YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
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